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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. [redacted] 129

VERNON E. CARLSON [Deceased]
(AMP Incorporated, Assignee)
Petitioner,

v.

ROBERT C. WOOFTER
(General Motors, Inc., Assignee)
Respondent.

PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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Respondent's brief is more illuminating in what it does not say than what it says, to wit: Nowhere in the brief does respondent deny that petitioner is the first inventor.

Respondent's brief suggests (pp. 1, 5) that the Constitutional issue is not seasonably presented. Petitioner has raised the Constitutional question at the earliest opportunity.

Respondent's brief begs the question when it states that the case is interlocutory (pp. 1, 4), and that the Woofter patent application may be subject to litigation. The Supreme Court succinctly answered this in *Gra-*

ham v. *John Deere Co.*, 383 U.S. 1 (1966), wherein Mr. Justice Clark stated:

> "... it must be remembered that the primary responsibility for sifting out unpatentable material lies in the Patent Office. To await litigation is—for all practical purposes—to debilitate the patent system." 383 U.S. at 18.

The respective patent applications have been tied up in these proceedings for thirteen years. Tying them up for another five years can hardly be said to strengthen the patent system. Furthermore, the issuance of a patent, which is void *ab initio*, is contrary to what Mr. Justice Clark referred to as the Patent Office's primary responsibility.

The fact of the matter is that the Court of Customs and Patent Appeals reversed the Patent Office, and effectively directed the Patent Office to issue the patent to the respondent. Unless this Court takes jurisdiction, the Patent Office will issue the patent to one who is not the first inventor, in due course.

Respondent may consider the matter interlocutory, but it is certainly final as far as the petitioner and the public are concerned.

Petitioner thoroughly agrees with respondent's citation of *Graham* v. *John Deere Co., supra,* as controlling. In that case, the Supreme Court found several restraints imposed by the stated Constitutional purpose implicit in the language of Article 1, Section 8, of the Constitution, and especially:

> "Moreover, Congress may not authorize the issuance of patents whose effects are to remove existent knowledge from the public domain . . . ." 383 U.S. at 6.

Issuance of a patent to one who is not the first inventor, after the first inventor disclosed it to the public, falls squarely into this prohibition.

Petitioner does not contend that Congress cannot define who is the first inventor (respondent's Brief, pp. 5-8). Petitioner's position is that the Congressional definition must accord with the Constitutional purpose. Furthermore, the Court of Customs and Patent Appeal's interpretations of the statute must also coincide with the Constitutional purpose. This is where the Court of Customs and Patent Appeals erred.

Respondent's third point (pp. 2, 8), if it is a point, is that Congress is presently legislating in this field and, therefore, the issue may become moot. It is highly speculative as to what type of legislation may be enacted, if any. If this Court refused jurisdiction of all cases subject to potential legislation, very few cases would be heard. Moreover, Congressional legislation in this field testifies to the public importance of the issue.

Respectfully submitted,

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